

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CAINE PELZER,

Petitioner,

v.

SUPERINTENDENT LAWRENCE
MAHALLY and
PA ATTORNEY GENERAL,

Respondents.

No. 4:15-CV-00222

(Judge Brann)

(Magistrate Judge Carlson)

ORDER

JUNE 18, 2019

Caine Pelzer filed this 28 U.S.C. § 2254 petition alleging numerous violations of his constitutional rights during his criminal trial and subsequent state proceedings.¹ On May 9, 2019, Magistrate Judge Martin C. Carlson issued a Report and Recommendation recommending that this Court grant Pelzer's petition and direct the Commonwealth of Pennsylvania to release Pelzer from custody within 90 days unless it reinstates his appellate and post-conviction relief rights.² No timely objections were filed to this Report and Recommendation.

¹ Docs. 1, 5.

² Doc. 36.

Where no objection is made to a report and recommendation, this Court will review the recommendation only for clear error.³ Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the findings or recommendations made by the magistrate judge.⁴ Upon review of the record, the Court finds no clear error in Magistrate Judge Carlson’s conclusion that Pelzer is entitled to equitable tolling of the limitations period and should be granted limited relief in the form of an Order directing his release from custody unless his appellate and post-conviction rights are reinstated.⁵ Consequently, **IT IS HEREBY ORDERED** that:

1. Magistrate Judge Martin C. Carlson’s Report and Recommendation (Doc. 36) is **ADOPTED**;
2. Pelzer’s motion for a temporary restraining order (Doc. 26) and motions for preliminary injunctions (Docs. 27, 29) are **DENIED**;
3. Pelzer’s 28 U.S.C. § 2254 petition (Doc. 1) is **GRANTED**; and

³ Fed. R. Civ. P. 72(b), advisory committee notes; *see Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining that court should in some manner review recommendations regardless of whether objections were filed).

⁴ 28 U.S.C. § 636(b)(1); Local Rule 72.31.

⁵ *See Ross v. Varano*, 712 F.3d 784, 804 (3d Cir. 2013).

4. The Commonwealth of Pennsylvania shall release Pelzer from custody within 90 days of the date of this Order unless it reinstates Pelzer's appellate and post-conviction relief rights.
5. The Clerk of Court is directed to **CLOSE** this case.

BY THE COURT:

s/ Matthew W. Brann

Matthew W. Brann
United States District Judge